

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY MITCHELL,

Plaintiff,

v.

JAMES CORY,

Defendant.

No. 2:20-cv-2132-JAM-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On August 6, 2021, defendant Cory, the sole defendant in this case, filed a motion to dismiss. *See* Fed. R. Civ. P. 12(b)(6). On September 3, 2021, and again on October 18, 2021, the court warned plaintiff that failure to respond to the motion could result in a recommendation that this action be dismissed. ECF Nos. 25 & 29. The time for responding to the motion has passed, and despite being granted two extensions of time, plaintiff failed to file an opposition or otherwise respond to the motion. Plaintiff has disobeyed this court's orders and failed to prosecute this action. The appropriate action is dismissal without prejudice.

Accordingly, it is RECOMMENDED that this action be dismissed without prejudice. *See* Fed. R. Civ. P. 41(b); E.D. Cal. L.R. 110.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Such a document should be captioned
3 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
4 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
5 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

6 DATED: December 6, 2021.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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